

REMARKS

The claims have not been amended. Accordingly, claims 1-25 are currently pending in the application, of which claims 1 and 14 are independent claims. Claims 26-33 were previously withdrawn.

Applicants request reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

Claim Objection

In the Office Action, claims 1 and 14 were objected to as not being described in the specification.

As set forth in the previous response, Applicants respectfully submit that support for claims 1 and 14 may be found at least at page 7, line 20 – page 8, line 19 of the specification. The present specification discloses how a transparent porous silica layer that remains transparent after absorption of moisture can be obtained, and the claims particularly point out and distinctly claim the subject matter regarded as the invention. Accordingly, the requirements of 35 U.S.C. § 112 are satisfied. However, in making the objection, the Examiner appears to be seeking a scientific explanation for the features of the claims. No such obligation is imposed upon Applicants. As such, the Examiner's objection is improper.

Accordingly, Applicants respectfully request withdrawal of the objection for claims 1 and 14.

Rejections Under 35 U.S.C. § 103

Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,803,127 issued to Su, *et al.* ("Su"), U.S. Patent No. 6,791,256 issued to

Nishizawa, *et al.* ("Nishizawa"), U.S. Patent No. 5,321,102 issued to Loy *et al.* ("Loy") and further in view of U. S. Patent No. 6,762,553 issued to Yokogawa, *et al.* ("Yokogawa").

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 550 U.S. ___, slip op. at 14-15 (2007). Furthermore, even if the prior art may be combined, the combination must disclose or suggest all of the claim limitations. *See in re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Assuming *arguendo* that the prior art elements could be combined, the combined prior art elements do not disclose or suggest all of the claim limitations.

Claim 1 recites, *inter alia*:

wherein the porous material layer consists of a transparent material without a polymer adapted to transmit light emitted by the organic electroluminescent portion to the front substrate and to absorb moisture and to remain transparent even after absorption of moisture

As stated in the Office Action, "Su and Nishizawa do not exemplify the moisture absorbing layer comprising a porous material layer comprising a transparent material adapted to transmit light emitted by the organic EL portion to the front substrate and to absorb moisture and to remain transparent even after absorption of moisture" (page 4). The Office Action relies upon Yokogawa and Loy to cure the deficiencies of Su and Nishizawa regarding the transparent

moisture-absorbing layer. However, Yokogawa and Loy fail to teach a transparent material adapted "to absorb moisture and to remain transparent even after absorption of moisture".

Loy is directed to the manipulation of the porosity of silica and fails to address transparency or lack thereof. The Office Action states that "Loy discloses silica gel material having plurality of holes with diameter between 0.5 to 100 nm (as claimed by the applicant) acting as molecular sieve and hence would have the same property of being transparent and staying transparent" (page 9 of Office Action). However, the Examiner does not have adequate basis for this assertion. Specifically, the examiner's conclusion presumes that pore diameter is the sole factor for whether the silica gel material retains transparency after absorption of moisture. Applicants disagree. As disclosed at page 8 of the specification, the process of forming the porous material layer of claim 1 influences its transparency before and after absorption of moisture. Therefore, pore diameter is not the sole cause of the transparent properties of the claimed porous material layer.

Further, if relying upon the theory of inherency to support the rejection, the examiner has failed to establish the requisite conditions. "To establish inherency, the extrinsic evidence, 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill in the art.' *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d, 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). "In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 UiSPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).). "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." MPEP § 2112.IV (citing to In re Rijckaert, 9 F.3d 1531, 1534, (Fed. Cir. 1993)) (emphasis added). Applicants respectfully

submit that the Examiner has failed to illustrate that the silica gel material of Loy necessarily has the property of being transparent and remaining transparent even after the absorption of moisture.

With regard to Yokogawa, the Examiner states that, "Yokogawa in pertinent field discloses (column 9, lines 61-67, column 10, lines 1-13 porous silica material (silica aerogel having high porosity (preferably at least 80%) and light transparency" (pages 4-5 of Office Action). However, Yokogawa further discloses the silica aerogel material being subjected to a hydrophobic treatment in order to prevent degradation of the refractive index and the light transparency (column 11, lines 36-48). If there is a need to make the silica aerogel material hydrophobic in order to maintain its transparency, then it may be inferred that the silica aerogel material is not transparent if it absorbs moisture. Therefore, Applicants respectfully submit that the Examiner has failed to illustrate that the silica aerogel material of Yokogawa necessarily has the property of being transparent and remaining transparent even after the absorption of moisture.

Thus, Su, Nishizawa, Loy, and Yokogawa, alone or in combination, fail to teach or suggest every feature of claim 1. Claim 14 recites similar features to claim 1 and as such, Su, Nishizawa, Loy, and Yokogawa also fail to teach or suggest each and every feature of claim 14.

Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1 and 14. Claims 2-13 and 15-25 depend from claims 1 or 14, respectively, and are allowable at least for this reason. Since none of the other prior art of record, whether taken alone or in any combination, discloses or suggests all the features of the claimed invention, Applicants respectfully submit that independent claims 1 and 14, and all the claims that depend therefrom, are allowable.

CONCLUSION

Applicants believe that a full and complete response has been made to the pending Office Action and respectfully submit that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

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